IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mukesh Dhoot. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 649/2006
against the order dated 1-3-2006 passed
by the Additional Chief Judicial Magistrate
No.2, Jodhpur, in FIR No.478/2005, Police
Station, Pratap Nagar, Jodhpur.

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Date of Order: August 10, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Sandeep Mehta, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Varun Gupta, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 1-3-2006 passed by the Additional Chief Judicial Magistrate No.2, Jodhpur (for short, "the trial Court" hereinafter) in FIR No. 478/2005, Police Station, Pratap Nagar, Jodhpur, on an application filed by the petitioner seeking custody of the currency notes recovered in the said FIR. That order came to be challenged by the petitioner before the Additional Sessions Judge No.2, Jodhpur (for short, "the Revisional Court" hereinafter) and the revision petition filed

by the petitioner was dismissed by the Revisional Court vide order dated 12-4-2006. Hence this criminal miscellaneous petition.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the Courts below.

It appears from the orders impugned and the FIR No. 478/2005, Police Station, Pratap Nagar, Jodhpur, lodged by the petitioner that a sum of Rs.54,92,500/- had been recovered from the accused therein. The petitioner as well as the non-petitioner No.2 the Income Tax Department filed applications under Section 457 of the Code seeking interim custody of the amount so recovered. The trial Court dismissed the application filed by the petitioner seeking interim custody of the amount so recovered, however accepted the application filed by the non-petitioner No.2 Income Tax Department and directed that the currency notes in the sealed condition, which have been deposited in the Malkhana of the Police Station, be given to the Income Tax Department through its Assistant Director Mr. T.R. Chawla. The trial Court, in its order, observed that the complainant neither disclosed the source of the said amount to the Income Tax Department, nor to the Court, and, therefore, in these circumstances, the possibility could not be ruled out that the petitioner has procured the said amount by illegal means and, therefore, the petitioner is not entitled to possess the said

amount.

It is contended by the learned counsel for the petitioner that this observation of the trial Court is unwarranted because it will prejudice the case of the petitioner.

The Income Tax Department has already served a notice to the petitioner under Section 131 (1) (a) of the Income Tax Act on 3-1-2006 for paying the tax on the said amount and the petitioner appeared before the Income Tax Department and submitted that he is prepared to surrender the amount so recovered to the Income Tax Department for the purpose of deduction of tax and, therefore, the matter is pending before the Income Tax Department. The aforesaid observation of the trial Court will prejudice the case of the petitioner before the Income Tax Department in the proceedings pending there.

In my view, the matter before the trial Court was as to who is the person best entitled for the possession of the said amount: whether the petitioner or the Income Tax Department, and if the trial Court thought it proper that the amount was to be given to the Income Tax Department then there was hardly any necessity for the trial Court to make observation which is prejudicial to the interest of either of the parties. The Revisional Court also not viewed the matter in the light that any observation made by the trial Court, without there being proper adjudication, will prejudice the case of either of the party. In the

circumstances, therefore, the order giving interim custody of the amount so recovered to the Income Tax Department does not suffer from any error, illegality or perversity. However, the observation made by the trial Court, as noticed above, stands be quashed.

With these observations, the criminal miscellaneous petition stands dismissed.

(H.R. PANWAR), J.

mcs